STATE OF MICHIGAN

COURT OF APPEALS

JAMES MICHAEL RAPPAPORT,

Plaintiff-Appellant,

v

DOTTIE DELONG and CASS T. CASUCCI,

Defendants-Appellees.

UNPUBLISHED
November 7, 2006

No. 271081
Cheboygan Circuit Court
LC No. 06-007555-CH

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

In this dispute over interests in real property, plaintiff appeals as of right from the circuit court's order granting defendant's motion for summary disposition to defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

Plaintiff was detained in jail, and needed cash to post bond and retain legal counsel. Defendant DeLong provided plaintiff with $20,000. Plaintiff owned a half interest in the house he shared with his recently deceased mother, and also had a half interest in the remainder of that property, pending probate proceedings. Plaintiff asserts that he conveyed those interests to DeLong as security for what he understood to be a loan, but that DeLong refused his attempt at repayment. Plaintiff approached defendant Casucci for assistance, but the latter ultimately purchased those interests from DeLong.

Plaintiff filed suit seeking rescission of the documents conveying his interests to DeLong on the grounds that he did not understand their nature and thought he was negotiating a loan, and that DeLong resorted to coercion and duress and exploited his lack of capacity in the matter. Plaintiff additionally sought to extinguish Casucci's interest in the subject property.

Defendants filed a motion for summary disposition. In responding to the motions, plaintiff suggested that the transaction between himself and DeLong be declared an equitable mortgage. Plaintiff and DeLong submitted affidavits in which they presented their conflicting characterizations of the transactions in question. Also before the trial court was a DVD recording of the execution of those transactions. The trial court concluded from the recording that no reasonable person could believe that plaintiff did not understand what he was doing when he conveyed his interests, and so granted defendant's motion for summary disposition.

We review a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

We agree with the trial court that defendant's documented admissions are dispositive of this case. "Summary disposition cannot be avoided by conclusory assertions that are at odds either with prior sworn testimony of a party or . . . actual historical conduct of a party." *Aetna Cas & Sur Co v Ralph Wilson Plastics Co*, 202 Mich App 540, 548; 509 NW2d 520 (1993).

We have viewed the DVD exhibit, and observe that plaintiff evinces calm demeanor and good humor throughout. The legal secretary conducting the proceeding repeatedly spoke of plaintiff's "selling" his interests in exchange for $20,000, and characterized DeLong as a "purchaser." Such words as "lend," "loan," or "collateral" are never spoken. Plaintiff consistently expresses his agreement with what is described, and unaffectedly signs the purchase agreement, assignment of interest, and quit-claim deed. Plaintiff also received assurances from the secretary that DeLong would pay the 2004 taxes on the property. It was also eminently clear that plaintiff understood he was selling valuable property for $20,000, well below the estimated value.

In deciding a motion for summary disposition, "[t]he court may not make factual findings or weigh credibility." *Manning v Hazel Park*, 202 Mich App 685, 689; 509 NW2d 874 (1993). But construing the evidence in the light most favorable to the opposing party does not mean failing to observe, or accepting blatantly implausible theories to disclaim, such plain evidence of the opposing party's actions and understandings as was before the court in this instance. There is no reasonable interpretation of that evidence except as indicating that plaintiff knowingly and voluntarily conveyed his interests in the subject property to DeLong in exchange for $20,000. Plaintiff's subsequent affidavit protesting that he understood the transaction to be a secured loan does not create an issue of fact for purposes of defeating defendants' motion for summary disposition. *Aetna*, *supra*.

Plaintiff suggests that his lack of intelligence and education caused him to understand the buyer-and-seller language used in the recorded signing ceremony as establishing security for a loan, instead of negotiating a sale. But those two arguments are at variance, because "buy" and "sell" mean something very different to a layperson from "lend" and "secure," and only persons with some understanding of law or finance would readily understand that such terms *could* technically be used to describe a loan and security for it. In any event, plaintiff stops short of pleading mistake of fact or fraud in the inducement as a contract defense. Instead, he seeks to have the deal between himself and DeLong declared an equitable mortgage.

"It is well settled that a court of equity can declare a deed absolute on its face to be a mortgage." *Grant v Van Reken*, 71 Mich App 121, 125; 246 NW2d 348 (1976). Also well settled is that "the adverse financial condition of the grantor, coupled with the inadequacy of the purchase price for the property, is sufficient to establish a deed absolute on its face to be a mortgage." *Koenig v Van Reken*, 89 Mich App 102, 106; 279 NW2d 590 (1979). But it is not sufficient that the seller has made a bad deal: "The court of equity protects the necessitous by

looking through form to the substance of the transaction. Although no set criterion has been established, the controlling factor in determining whether a deed absolute on its face should be deemed a mortgage is the intention of the parties." *Id.* Accordingly, the combination of duress and inadequate consideration bear on the question not because fairness demands that a remorseful seller be allowed to undo the deal, but instead come to bear to the extent that "they are an indication that the parties did not consider the conveyance to be absolute." *Id.* at 107.

In this case, the DVD of the signing ceremony leaves no doubt that plaintiff and DeLong understood that they were concluding an outright sale of interests.[1] Accordingly, the trial court correctly granted summary disposition to defendants.

Affirmed.

/s/ Karen Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

[1] We further note that plaintiff nowhere suggests that any specific rate of interest, or repayment schedule, was ever agreed upon.